

Docket No. DP-302561

REMARKS

Claims 1, 4-16, 19, 20, 24-29, and 31 are pending in the present application. Claims 15, 20 and 25-29 are allowed, Claim 31 has been amended, leaving Claims 1, 4-16, 19, 20, 24-29, and 31 for consideration upon entry of the present Amendment.

Claim 31 has been amended merely to correct its dependency. Support for this amendment can be found in Claims 1, 9 and 16 as filed.

Reconsideration and allowance of the claims is respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claim 31 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner alleges that "said stabilizer" in Claim 31 lacks antecedent basis. Claim 31 has been amended to depend from Claim 16, thus providing proper antecedent basis for "said stabilizer". Reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, are requested.

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 1, 4-14, 16, 24, and 31 stand rejected under 35 U.S.C. § 102(e), as allegedly anticipated by U.S. Patent No. 6,518,213 to Yamamoto et al. (hereinafter "Yamamoto"). Applicants respectfully traverse this rejection.

First, Applicants traverse the rejection on the grounds that Yamamoto is not a 35 U.S.C. § 102(e) reference. Applicants conceived the present invention prior to July 14, 2000 and diligently reduced the invention to practice. Applicants reserve the right to later submit a declaration under 37 CFR 1.131.

Second, the above argument is moot because Yamamoto does not anticipate the present claims. The present claims are directed to a catalyst for treating an exhaust gas stream. Present Claims 1, 4-14, 16, and 31 have an outer layer comprising at least about 50 weight percent of an alkaline earth component. Present Claim 1, for example, is directed to a catalyst comprising a NO_x occluding catalyst structure comprising an alkaline earth

Docket No. DP-302561

exchanged zeolite and having an outer layer comprising at least about 50 weight percent of an alkaline earth component, and not more than about 42 weight percent of a rare earth component.

Yamamoto teaches a catalyst comprising a hydrocarbon adsorbent layer (A) coated with a metal-based catalyst layer (B) in which both layers contain an alkaline earth metal (Abstract). The hydrocarbon adsorbent layer can contain an ion-exchanged zeolite (col. 6, lines 42-51).

In making the rejection, the Examiner alleges that "the overlayer contains 60% or more alkaline earth" and cites column 11, lines 54-57 (Paper 18, Page 3). Applicants disagree with the Examiner's reading of Yamamoto.

In column 11, lines 54-57 of Yamamoto, it is stated that "the catalysts prepared by EXAMPLEs # 1 to #11 contain 60 weight % or more of all addition amount of Ba (alkaline earth metal) in the metal based layers (overlying layer)". This does not mean that 60 wt% of the overlayer comprises an alkaline earth metal. This merely means that 60 wt% of the added alkaline earth metal can be found in the overlayer or metal-based catalyst layer (B). Table 1 gives the amount of barium (i.e., alkaline earth salt) in grams per liter of the metal-based catalyst layer. On page 9, line 11, it is stated that the metal-based catalyst layer is loaded at a concentration of 150 g/L. The amount of alkaline earth metal salt in the various catalyst examples of Yamamoto can be calculated as shown in the table below.

Docket No. DP-302561

Example	Amount of alkaline earth metal in metal-based catalyst layer in g/L	Total amount of metal-based catalyst layer in g/L	Percentage of alkaline earth metal in the metal-based catalyst layer
1	24	150	16 wt%
2	27	150	18 wt%
3	18	150	12 wt%
4	10	150	6.7 wt%
5	24	150	16 wt%
6	16	150	10.7 wt%
7	24	150	16 wt%
8	21	150	14 wt%
9	24	150	16 wt%
10	13	150	8.7 wt%
11	12	150	8.0 wt%
Comparative #1	0	150	0 wt%
Comparative #2	3	150	2 wt%

As can be seen from the above Table, the maximum amount of an alkaline earth salt in the metal-based catalyst overlayer of Yamamoto 18 weight percent, significantly below the presently claimed amount of 50 weight percent. To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). As shown in the above table, Yamamoto does not teach a catalyst having an outer layer comprising at least about 50 weight percent of an alkaline earth component. Because Yamamoto is missing at least this element of the present claims, Yamamoto does not anticipate present Claims 1, 4-14, 16, and 31.

Regarding present Claim 24, this claim is directed to a catalyst for treating an exhaust gas stream comprising a NO_x occluding catalyst structure comprising an alkaline earth exchanged zeolite and an alkaline earth alumina and having an outer layer comprising an alkaline earth oxide component, a rare earth oxide component, a surface area stabilizer, and a ceramic oxide binder. Yamamoto at least does not teach an alkaline earth alumina as required by present Claim 24. Because Yamamoto is missing this claim element, it does not anticipate Claim 24.

In view of the foregoing, reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e) are requested.

Docket No. DP-302561

Allowable subject matter

Claim 19 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. In view of the foregoing arguments, Applicants decline to amend Claim 19 at this time.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Cantor Colburn LLP.

Respectfully submitted,

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